THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 26214 of 2006

Dated: 18.12.2006

Between:

B. Rama Subbaiah, Driver, E.426099, S/o Subbanna, aged 34 years, Allagadda Depot, R/o Allagadda, Kurnool District.

..... PETITIONER

AND

The Regional Manager, APSRTC, Kurnool Region, Kurnool and others.

.....RESPONDENTS

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Writ Petition No. 26214 of 2006

Order:

The petitioner was appointed as Casual Driver in the respondents-A.P.S.R.T.C in the year 1997. He was issued a charge sheet on 25.03.1998 alleging that the bus driven by him on route Koilkuntla to Allagadda (Mayalur) on 04.03.1998 met with an accident, resulting in death of a motorcyclist on the spot. The petitioner submitted his explanation to the charges. Thereafter, an enquiry was conducted into the charges. The Enquiry Officer, having conducted the enquiry, held the charges proved. Based on the findings of the enquiry report, the 2nd respondent-Depot Manager, vide proceedings dated 01.08.1998, ordered his removal. Aggrieved by the same, the petitioner preferred appeal before the Deputy Chief Traffic Manager, Kurnool, which was dismissed. Thereafter, he filed review petition before the 1st respondent-Regional Manager, and the 1st respondent, by proceedings dated 30.06.1999, set aside the said removal order and ordered to reinstate the petitioner into service as fresh casual driver on daily wage basis. Pursuant thereto, the petitioner was reinstated into service as fresh casual driver and was continuing as such. The petitioner states that subsequently he was acquitted from the criminal case, which was registered on the same charges, and after receipt of copy of said judgment, he filed reminder review before the 1st respondent seeking to review the punishment imposed, and as the respondents-APSRTC have not considered the same and not regularized his services by calculating his past service, he filed W.P. No. 19442 of 2005, and this Court, by order dated 14.09.2005, directed the respondents-APSRTC that in case any person appointed subsequent to the fresh appointment of the petitioner was regularized, the petitioner shall also be extended the same benefit. Consequently, the 1st respondent-Regional Manager passed the impugned order dated 08.12.2005 stating that no juniors to

the petitioner appointed subsequent to the fresh appointment of the petitioner were regularized. Questioning the said orders, the petitioner filed the present writ petition.

The learned counsel for the petitioner submitted that when the review authority came to a conclusion that the petitioner is entitled for reinstatement, automatically he is eligible for the back wages as well as the continuity of service and that the order of the review authority in so far as denying the back wages and continuity of service is disproportionate to the proved misconduct. He further submits that since the petitioner was acquitted from the criminal case, which was registered on the same charges, the punishment imposed by the respondents-Corporation is unjust and he is entitled to get the arrears of wages till date including the arrears of difference of wages after regularization of his services. He further submits that the contention of the respondents that no junior to the petitioner appointed subsequent to his fresh appointment was regularized is not correct. He, thus, prayed to set aside the impugned order and allow the writ petition.

Learned Standing Counsel for the respondents-Corporation contended that given the misconduct, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, and the review authority, on re-appreciation of the entire material on record, though found that the charges against the petitioner are proved, while observing that the punishment of removal of the petitioner from service is not in proportion to the charges proved, took a lenient view and accordingly modified the punishment and directed the respondent-Corporation to reinstate the petitioner into service as fresh casual driver, but denied the back-wages and continuity of service, and no interference is called for therewith. He further submits that according to the seniority list no juniors appointed subsequent to the fresh appointment of the petitioner were regularized and the services of the petitioner will be regularized as and when his turn comes as per the seniority in Kurnool Region as well as existing circular instructions. He,

thus, prays to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

A perusal of the record would show that as against the removal order dated 01.08.1998, passed by the 2nd respondent-Depot Manager, the petitioner filed an appeal before the appellate authority, which was dismissed confirming the orders of the 2nd respondent-Depot Manager. Thereafter, the petitioner filed review petition before the 1st respondent-Regional Manager, and the 1st respondent-Regional Manager, after considering the entire material on record, has taken a lenient view and modified the punishment from that of removal to reinstatement of the petitioner into service as fresh casual driver and denied the past service and other benefits, vide proceedings dated 30.06.1999. Had the review authority held that the charges leveled against the petitioner are not proved, then the petitioner would have been justified in contending that he should be awarded continuity of service and backwages upon reinstatement, but that is not the case. The review authority, having held that the charges leveled against the petitioner are proved, has taken a lenient view and ordered his reinstatement into service. Merely because the petitioner was directed to be reinstated into service by setting aside the order of removal, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (see **U.P. State Brassware Corpn.Ltd. v. Uday Narain Pandey**[1]). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the review authority on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority had passed orders in violation of the principles of natural justice. But the review authority has set aside the order of removal passed by the disciplinary authority and ordered

reinstatement of the petitioner into service on the ground that the punishment imposed was disproportionate to the proved misconduct.

In **Karnataka Bank Ltd. V. A.L. Mohan Rao**[2], the apex Court held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority was set aside by the review authority, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

Further, mere acquittal of the petitioner by the Criminal Court does not automatically give him the right to claim setting aside the punishment awarded by the disciplinary authority and the review authority. Before the Enquiry Officer the evidence led by the management was different from that led by the prosecution in the criminal case and the approach and the objectives of the criminal proceedings and the disciplinary proceedings are altogether distinct and different. Therefore, it was open to the Disciplinary Authority to have come to an independent conclusion dehors the finding of the Criminal Court.

That apart, though the review authority passed orders on 30.06.1999, the petitioner kept quiet for about six years, and thereafter he filed W.P. No. 19442 of 2005 questioning the said orders, and this Court, by order dated 14.09.2005, disposed of the said writ petition (the order copy of which was not enclosed to the present writ petition) with a direction to the respondents-APSRTC that in case any person appointed subsequent to the fresh appointment of the petitioner was regularized the petitioner shall also be extended the same benefit. Pursuant to the said orders, the 1st respondent-Regional Manager passed the impugned

proceedings, dated 08.12.2005. It is clearly stated in the impugned proceedings that according to the seniority list, no juniors to the petitioner, appointed subsequent to the fresh appointment of the petitioner, were regularized, and the case of the petitioner will be considered for regularization as and when his turn comes as per the seniority in Kurnool Region as well as existing circular instructions. The punishment imposed against the petitioner by the

2nd respondent-Depot Manager, which was subsequently modified by the review authority to that of reinstatement into service as fresh casual driver without continuity of service and back wages, has not modified by any Court and the same has attained finality. Hence, the petitioner's seniority will be reckoned from the date of his joining into service subsequent to the review orders passed on 30.06.1999, and according to the respondents no juniors appointed subsequent to the fresh appointment of the petitioner were regularized and the services of the petitioner will be regularized as and when his turn comes as per the seniority in Kurnool Region as well as existing circular instructions. In that view of the matter, no exception can be taken to the orders passed by the 1st respondent-Regional Manager.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Date: 18.12.2006
NSR/ISL

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1 (2006) 1 SCC 479
2 (2006) 1 SCC 63